

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE L. VONTRESS,

Plaintiff,

V.

THE STATE OF NEVADA, et al.,

Defendants.

Case No. 2:18-cv-01746-RFB-PAL

ORDER

(Mots. Compel – ECF Nos. 52, 53, 57)

12 This matter is before the court on Plaintiff George L. Vontress' Motions to Compel
13 Discovery (ECF Nos. 52, 53, 57). These Motions are referred to the undersigned pursuant to 28
14 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice. The court has considered the
15 Motions, the Response (ECF No. 59) filed by Defendants Frank Dreesen, James Dzurenda, Dwight
16 Neven, and Vontress' Reply (ECF No. 63).

BACKGROUND

18 Mr. Vontress is a pro se prisoner in the custody of the Nevada Department of Corrections
19 (“NDOC”) and currently housed at the Saguaro Correctional Center in Eloy, Arizona. He has
20 received permission to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915 and LSR
21 1-1 of the Local Rules of Practice. He commenced this action on in September 2018 by filing an
22 IFP Application (ECF No. 1) and proposed complaint.¹ This case arises from Vontress’
23 allegations, pursuant to 42 U.S.C. § 1983, regarding his treatment while he was incarcerated at the
24 High Desert State Prison and Saguaro Correctional Center.

25 The court reviewed the Complaint (ECF No. 35) and determined that it states 12 plausible
26 claims for: (1) due process violations against Defendant Lt. John Doe (portion of Count I);

²⁷ 1 Vontress also filed Motions for Temporary Injunction and Preliminary Injunction (ECF Nos. 2, 3), which
28 the district judge ultimately denied as moot. Min. Order in Chambers (ECF No. 33).

1 (2) deliberate indifference to serious medical needs against Defendant Lt. John Doe (Count II);
2 (3) supervisory liability for administrative segregation due process against Defendant Nevens
3 (portion of Count III); (4) deliberate indifference to serious medical needs against Defendant John
4 Doe medical provider (Count IV); (5) conspiracy against Defendants Lt. John Doe and John Doe
5 medical provider (Count V); (6) deliberate indifference to serious medical needs against Defendant
6 Dr. Pena (Count VII); (7) deliberate indifference to serious medical needs against Defendant
7 Gentry (Count VIII); (8) conspiracy against Defendants Gentry and Dr. Pena (portion of Count
8 VIII); (9) retaliation and conspiracy against Defendants Gentry and Dreeson (portion of Count
9 IX); (10) deliberate indifference to serious medical needs and conspiracy against Defendants
10 Henninger,² CoreCivic, and Dzurenda (Count XI); (11) deliberate indifference to serious medical
11 needs against Defendants Fuller, Williams, and Doe SCC medical staff (Count XII); and
12 (12) deliberate indifference to serious medical needs against Defendants Fuller, Thomas, and Marr
13 (Count XIII).³ *See* Screening Order (ECF No. 34).

14 The court stayed the case for 90 days to allow the parties an opportunity to settle their
15 dispute through the Inmate Early Mediation Program before the filing of an answer or starting the
16 discovery process. *Id.*; *see also* Order Setting Inmate Early Mediation Conference (ECF No. 40).
17 However, the parties did not reach a settlement and the case was returned to the normal litigation
18 track. *See* Feb. 15, 2019 Mins. of Proceedings (ECF No. 47).

19 The court entered an Order (ECF No. 50) (“Service Order”) instructing Mr. Vontress to
20 perfect service within 90 days, which set a service deadline of May 24, 2019. In addition, the court
21 directed electronic service of the Complaint on the Nevada Office of the Attorney General
22 (“Attorney General”) and instructed that a notice be filed with the court indicating the names of
23 the defendants for whom the Attorney General accepts service, and those it does not. *Id.* With
24 regard to Defendants Hininger, Thomas, Marr, Fuller, Williams, and CoreCivic, the court
25 instructed that summonses be issued and ordered the U.S. Marshal to attempt service of process.
26 *Id.*; Summons (ECF No. 51).

27 ² Defense counsel represents that Defendant Hininger was incorrectly sued as “Henninger.” ECF No. 56.

28 ³ The claims against the “doe” defendants will proceed when Mr. Vontress learns their identities.

The Attorney General accepted service on behalf of Defendants Frank Dreesen, James Dzurenda, Dwight Neven, and Dr. Rene Pena (collectively, “NDOC Defendants”) on March 15, 2019. Notice Acceptance of Service (ECF No. 60). However, the Attorney General did not accept service for Defendant Jo Gentry, but filed his last known address under seal as ordered. *See* Notice of Sealed Submission (ECF No. 62); Sealed Submission of Last Known Address (ECF No. 61).

The NDOC Defendants' answers or responsive pleadings are due May 15, 2019. *See Order* (ECF No. 50) at 4. Because no answers have been filed and many defendants remain unserved,⁴ no discovery plan and scheduling order has been entered.

DISCUSSION

Mr. Vontress has filed three motions (ECF Nos. 52, 53, 57) requesting court orders compelling various defendants to produce discovery materials. The motions seek records such as incident reports, disciplinary reports, emails, faxes, his medical records, and records of previous litigation involving NDOC and CoreCivic. Vontress asserts this discovery is necessary for him to successfully name and serve the unnamed defendants and prosecute his case. The motions were filed between February 28 and March 8, 2019. At the time, no named defendant was served, no answer was filed, and a discovery plan and scheduling order was not entered.

The NDOC Defendants filed a Response (ECF No. 59) to one motion, arguing that Mr. Vontress' discovery requests are premature and improper as defendants had yet to file a notice of acceptance of service or their answer and the court has not "issued a scheduling order signaling commencement of discovery." *Id.* at 2. Vontress' Reply (ECF No. 63) states that he realizes notice of acceptance of service has not been filed and that is "exactly Plaintiff's point." *Id.* at 2. He wants to name and serve all defendants so that a notice of acceptance of service can be made on behalf of all the defendants, and he needs the requested discovery to do so. With regard to the NDOC Defendants argument that a motion to compel is not the proper vehicle for him to submit discovery requests, he responds that "any vehicle Plaintiff decides to utilize, in order to get from

⁴ To date, Mr. Vontress has not requested issuance of summons for Gentry. In addition, the Summons (ECF No. 51) have not been executed for Defendants Hininger, Thomas, Marr, Fuller, Williams, and CoreCivic. *See Order* (ECF No. 58). The court therefore addressed the status of service in a separate order entered today.

1 point A to point B, and for which this noble court is willing to construe. is adequate.” *Id.* Thus,
2 he asks the court to compel the requested discovery.

3 Pursuant to the Federal Rules of Civil Procedure and Local Rules of Civil Practice of this
4 district, filing a motion with the court is not the proper procedure for requesting written discovery
5 materials from a party.⁵ Once the court enters a scheduling order, the parties are permitted to
6 engage in discovery. *See Fed. R. Civ. P. 16.* In prisoner civil rights actions, the court will enter a
7 scheduling order within 30 days after any defendant files an answer. LR 16-1(b). All discovery
8 requests must be served *directly on opposing parties*, who then have 30 days to respond. Fed. R.
9 Civ. P. 34. The Local Rules also state:

10 Unless the court orders otherwise, written discovery, including discovery requests,
11 discovery responses, deposition notices, and deposition transcripts, must not be
12 filed with the court. Originals of responses to written discovery requests must be
served on the party who served the discovery request, and that party must make the
originals available at the pretrial hearing, at trial, or when ordered by the court

13 LR 26-8.

14 A motion to compel discovery materials may only be filed when a discovery request has
15 been timely served, the opposing party has not responded or has inadequately responded, and the
16 moving party has attempted in good faith to resolve any dispute about the adequacy of the
discovery responses without the court’s intervention. Fed. R. Civ. P. 37(a); LR 26-7. Additionally,
18 “All motions to compel discovery or for protective order must set forth in full the text of the
discovery originally sought and any response to it.” LR 26-7(b).

20 The Local Rules state that discovery motions will not be considered unless the movant
21 (1) has made a good-faith effort to meet and confer before filing the motion, and (2) includes a
22 declaration with the details and results of the parties’ meet-and-confer conference about each
23 disputed discovery request. LR 26-7(c). The “meet and confer” process requires the parties “to
24 communicate directly and discuss in good faith the issues required under the particular rule or
court order.” LR IA 1-3(f). This “meet and confer” requirement applies to all parties. *Id.* Unless
26 a court order provides otherwise, “this requirement may only be satisfied through direct dialogue

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28 ⁵ All references to a “Rule” or the “Federal Rules” in this Order refer to the Federal Rules of Civil
Procedure.

1 and discussion in a face-to-face meeting, telephone conference, or video conference.” *Id.* The
2 exchange of written, electronic, or voice-mail communications do not satisfy the “meet and confer”
3 requirement. *Id.*

4 Mr. Vontress’ motions to compel are denied for several reasons. First, the court has not
5 yet entered a discovery plan and scheduling order in this case because no defendant has filed an
6 answer to the complaint. Thus, the time period for discovery has not started. Second, many of the
7 named defendants in this case have not yet been served. The defendants are not required to file an
8 answer until they are properly served. *See Order* (ECF No. 58). Unless and until service is
9 complete, those defendants are not parties to this case. Written discovery requests to produce
10 documents, electronically stored information, and tangible things pursuant to Rule 34 may only be
11 served on parties. Fed. R. Civ. P. 34(a) (“A party may serve on *any other party* a request within
12 the scope of Rule 26(b)....”) (emphasis added). Third, Vontress’ motions do not attach the “full
13 the text of the discovery originally sought and any response to it.” LR 26-7(b). The motions
14 clearly indicate that Vontress sought the court’s intervention before serving his written discovery
15 requests and waiting for the defendants’ response. Lastly, the motions do not show that he
16 complied with the meet and confer requirement imposed by Rule 37(a) and the Local Rules.
17 Where one of the parties is a prisoner, the court does not require in-person meetings and allows
18 the prisoner and defense counsel to meet and confer by telephone or by exchanging letters.
19 Although the format of the meet-and-confer process changes, the substantive requirement remains
20 the same—the parties must engage in a good faith effort to meet and confer to resolve the dispute
21 before filing a motion to compel seeking court intervention.

22 The court appreciates that it is difficult for pro se parties to litigate their claims, and that
23 Mr. Vontress is seeking discovery in order to identify the unnamed defendants, complete service,
24 and prosecute his case. However, Vontress may not decide to utilize any vehicle he wants to
25 accomplish his goals. Rather, he must follow the Federal Rules and Local Rules the same as any
26 other litigant or attorney. *E.g., Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (noting that “*pro*
27 *se* litigants are bound by the rules of procedure”); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986)
28 (noting that a pro se litigant must follow the same rules of procedure that govern other litigants).

1 Mr. Vontress should carefully review the discovery rules contained in Rules 26–36 of the Federal
2 Rules and the Local Rules of Practice to ensure he follows the appropriate procedures. The court
3 will enter a discovery plan and scheduling order in the normal course.

4 Accordingly,

5 **IT IS ORDERED:** Plaintiff George L. Vontress' Motions to Compel Discovery (ECF
6 Nos. 52, 53, 57) are **DENIED**.

7 Dated this 22nd day of April 2019.

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10 PEGGY A. LEEN
11 UNITED STATES MAGISTRATE JUDGE
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